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LRB096 03817 AJO 23299 a

1 AMENDMENT TO HOUSE BILL 530

2 AMENDMENT NO. _____. Amend House Bill 530 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Sections 2-1303, 12-805, 12-808, and 12-811 as
6 follows:

7 (735 ILCS 5/2-1303) (from Ch. 110, par. 2-1303)

8 Sec. 2-1303. Interest on judgment.

9 (a) Judgments recovered in any court shall draw interest at
10 the rate of 9% per annum from the date of the judgment until
11 satisfied or 6% per annum when the judgment debtor is a unit of
12 local government, as defined in Section 1 of Article VII of the
13 Constitution, a school district, a community college district,
14 or any other governmental entity; provided that if the judgment
15 debtor qualifies for relief under subsection (b), the court may
16 reduce the interest rate to as low as 3% per annum. When

1 judgment is entered upon any award, report or verdict, interest
2 shall be computed at the above rate, from the time when made or
3 rendered to the time of entering judgment upon the same, and
4 included in the judgment. Interest shall be computed and
5 charged only on the unsatisfied portion of the judgment as it
6 exists from time to time. The judgment debtor may by tender of
7 payment of judgment, costs and interest accrued to the date of
8 tender, stop the further accrual of interest on such judgment
9 notwithstanding the prosecution of an appeal, or other steps to
10 reverse, vacate or modify the judgment.

11 (b) The court may, pursuant to Section 12-811, enter an
12 order reducing the amount of wages withheld and reducing the
13 rate of interest a judgment debtor is obligated to pay on the
14 judgment, if the court finds that the judgment debtor is a
15 "family supporter" and the full wage garnishment would result
16 in a denial of necessities to the judgment debtor's dependent.
17 The term "family supporter" means an individual who actually
18 supports and resides with one or more dependents. The term
19 "dependent" means a child under the age of 18 who resides with
20 and is supported by the judgment debtor or a disabled person
21 who resides with and is supported by the judgment debtor and
22 whose relationship with the judgment debtor is that of parent,
23 stepparent, son, daughter, sibling, uncle, aunt, grandparent,
24 or ward. A reduction in the rate of interest on a judgment
25 ordered by the court shall be prospective only and shall not be
26 below 3% per annum. Subsequent to the entry of an order

1 reducing the rate of interest on a judgment pursuant to this
2 subsection, any party may request that a prospective
3 readjustment in the rate be made, based on a relevant change in
4 circumstances.

5 (Source: P.A. 85-907.)

6 (735 ILCS 5/12-805) (from Ch. 110, par. 12-805)

7 Sec. 12-805. Summons; Issuance.

8 (a) Upon the filing by a judgment creditor, its attorney or
9 other designee of (1) an affidavit that the affiant believes
10 any person is indebted to the judgment debtor for wages due or
11 to become due, as provided in Part 8 of Article XII of this
12 Act, and includes the last address of the judgment debtor known
13 to the affiant as well as the name of the judgment debtor, and
14 a certification by the judgment creditor or his attorney that,
15 before filing the affidavit, the wage deduction notice has been
16 mailed to the judgment debtor by first class mail at the
17 judgment debtor's last known address, and (2) written
18 interrogatories to be answered by the employer with respect to
19 the indebtedness, the clerk of the court in which the judgment
20 was entered shall issue summons against the person named in the
21 affidavit as employer commanding the employer to appear in the
22 court and answer the interrogatories in writing under oath. The
23 interrogatories shall elicit all the information necessary to
24 determine the proper amount of non-exempt wages. The
25 interrogatories shall require that the employer certify that a

1 copy of the completed interrogatories as specified in
2 subsection (c) of Section 12-808 has been mailed or hand
3 delivered to the judgment debtor and shall be in a form
4 consistent with local court rules. The summons shall further
5 command federal agency employers, upon effective service of
6 summons pursuant to 5 USC 5520a, to commence to pay over
7 deducted wages in accordance with Section 12-808. The summons
8 shall be in a form consistent with local court rules. The
9 summons shall be accompanied by a copy of the underlying
10 judgment or a certification by the clerk of the court that
11 entered the judgment, or by the attorney for the judgment
12 creditor, setting forth the date and amount of the judgment,
13 allowable costs expended, interest accumulated, credits paid
14 by or on behalf of the judgment debtor and the balance due the
15 judgment creditor, and one copy of a wage deduction notice in
16 substantially the following form:

17 "WAGE DEDUCTION NOTICE

18 (Name and address of Court)

19 Name of Case: (Name of Judgment Creditor),

20 Judgment Creditor v.

21 (Name of Judgment Debtor),

22 Judgment Debtor.

23 Address of Judgment Debtor: (Insert last known address)

24 Name and Address of Attorney for Judgment

25 Creditor or of Judgment Creditor (if no

26 attorney is listed): (Insert name and address)

1 Amount of Judgment: \$.....

2 Employer: (Name of Employer)

3 Return Date: (Insert return date specified in summons)

4 NOTICE: The court shall be asked to issue a wage deduction
5 summons against the employer named above for wages due or about
6 to become due to you. The wage deduction summons may be issued
7 on the basis of a judgment against you in favor of the judgment
8 creditor in the amount stated above.

9 The amount of wages that may be deducted is limited by
10 federal and Illinois law.

11 (1) Under Illinois law, the amount of wages that may be
12 deducted is limited to the lesser of (i) 15% of gross
13 weekly wages or (ii) the amount by which disposable
14 earnings for a week exceed the total of 45 times the
15 federal minimum hourly wage or, under a wage deduction
16 summons served on or after January 1, 2006, the minimum
17 hourly wage prescribed by Section 4 of the Minimum Wage
18 Law, whichever is greater.

19 (2) Under federal law, the amount of wages that may be
20 deducted is limited to the lesser of (i) 25% of disposable
21 earnings for a week or (ii) the amount by which disposable
22 earnings for a week exceed 30 times the federal minimum
23 hourly wage.

24 (3) Pension and retirement benefits and refunds may be
25 claimed as exempt from wage deduction under Illinois law.

26 (4) Under Illinois law, the court may enter an order

1 reducing the amount of wages withheld and reducing the rate
2 of interest a judgment debtor is obligated to pay on the
3 judgment, if the court finds that the judgment debtor is a
4 "family supporter" and the full wage garnishment would
5 result in a denial of necessities to the judgment debtor's
6 dependent.

7 You have the right to request a hearing before the court to
8 dispute the wage deduction because either the wages are exempt,
9 or you are a "family supporter" and are requesting (1) a
10 reduction in the amount of the wage garnishment because the
11 full wage garnishment would result in a denial of necessities
12 to your dependent or (2) a reduction in the interest rate on
13 the judgment if the court determines that you are a family
14 supporter and entitled to relief taking into consideration the
15 needs of your dependent and your ability to meet those needs.
16 "Dependent" means a child under the age of 18 who resides with
17 and is supported by the judgment debtor or a disabled person
18 who resides with and is supported by the judgment debtor and
19 whose relationship with the judgment debtor is that of parent,
20 stepparent, son, daughter, sibling, uncle, aunt, grandparent,
21 or ward. You are a "family supporter" if you actually support
22 and reside with a child under the age of 18 or you reside with
23 and support a disabled person who is your parent, stepparent,
24 son, daughter, sibling, uncle, aunt, grandparent, or ward. To
25 obtain a hearing in counties with a population of 1,000,000 or
26 more, you must notify the Clerk of the Court in person and in

1 writing at (insert address of Clerk) before the Return Date
2 specified above or appear in court on the date and time on that
3 Return Date. To obtain a hearing in counties with a population
4 of less than 1,000,000, you must notify the Clerk of the Court
5 in writing at (insert address of clerk) on or before the Return
6 Date specified above. The Clerk of the Court will provide a
7 hearing date and the necessary forms that must be prepared by
8 you or your attorney and sent to the judgment creditor and the
9 employer, or their attorney, regarding the time and location of
10 the hearing. This notice may be sent by regular first class
11 mail."

12 (b) In a county with a population of less than 1,000,000,
13 unless otherwise provided by circuit court rule, at the request
14 of the judgment creditor or his or her attorney and instead of
15 personal service, service of a summons for a wage deduction may
16 be made as follows:

17 (1) For each employer to be served, the judgment
18 creditor or his or her attorney shall pay to the clerk of
19 the court a fee of \$2, plus the cost of mailing, and
20 furnish to the clerk an original and one copy of a summons,
21 an original and one copy of the interrogatories and an
22 affidavit setting forth the employer's mailing address, an
23 original and one copy of the wage deduction notice required
24 by subsection (a) of this Section, and a copy of the
25 judgment or certification described in subsection (a) of
26 this Section. The original judgment shall be retained by

1 the clerk.

2 (2) The clerk shall mail to the employer, at the
3 address appearing in the affidavit, the copy of the
4 judgment or certification described in subsection (a) of
5 this Section, the summons, the interrogatories, and the
6 wage deduction notice required by subsection (a) of this
7 Section, by certified or registered mail, return receipt
8 requested, showing to whom delivered and the date and
9 address of delivery. This Mailing shall be mailed on a
10 "restricted delivery" basis when service is directed to a
11 natural person. The envelope and return receipt shall bear
12 the return address of the clerk, and the return receipt
13 shall be stamped with the docket number of the case. The
14 receipt for certified or registered mail shall state the
15 name and address of the addressee, the date of the mailing,
16 shall identify the documents mailed, and shall be attached
17 to the original summons.

18 (3) The return receipt must be attached to the original
19 summons and, if it shows delivery at least 3 days before
20 the return date, shall constitute proof of service of any
21 documents identified on the return receipt as having been
22 mailed.

23 (4) The clerk shall note the fact of service in a
24 permanent record.

25 (c) Instead of personal service, a summons for a wage
26 deduction may be served and returned in the manner provided by

1 Supreme Court rule for service, otherwise than by publication,
2 of a notice for additional relief upon a party in default.

3 (Source: P.A. 94-306, eff. 1-1-06.)

4 (735 ILCS 5/12-808) (from Ch. 110, par. 12-808)

5 Sec. 12-808. Duty of employer.

6 (a) An employer served as herein provided shall pay the
7 employee the amount of his or her exempt wages.

8 (b) To the extent of the amount due upon the judgment and
9 costs, the employer shall hold, subject to order of court, any
10 non-exempt wages due or which subsequently come due. The
11 judgment or balance due thereon is a lien on wages due at the
12 time of the service of summons, and such lien shall continue as
13 to subsequent earnings until the total amount due upon the
14 judgment and costs is paid, except that such lien on subsequent
15 earnings shall terminate sooner if the employment relationship
16 is terminated or if the underlying judgment is vacated or
17 modified.

18 (b-5) If the employer is a federal agency employer and the
19 creditor is represented by an attorney, then the employer, upon
20 service of summons and to the extent of the amount due upon the
21 judgment and costs, shall commence to pay over to the attorney
22 for the judgment creditor any non-exempt wages due or that
23 subsequently come due. The attorney for the judgment creditor
24 shall thereafter hold the deducted wages subject to further
25 order of the court and shall make answer to the court regarding

1 amounts received from the federal agency employer. The federal
2 agency employer's periodic payments shall be considered a
3 sufficient answer to the interrogatories.

4 (c) Except as provided in subsection (b-5), the employer
5 shall file, on or before the return date or within the further
6 time that the court for cause may allow, a written answer under
7 oath to the interrogatories, setting forth the amount due as
8 wages to the judgment debtor for the payroll periods ending
9 immediately prior to the service of the summons and a summary
10 of the computation used to determine the amount of non-exempt
11 wages. Except as provided in subsection (b-5), the employer
12 shall mail by first class mail or hand deliver a copy of the
13 answer to the judgment debtor at the address specified in the
14 affidavit filed under Section 12-805 of this Act, or at any
15 other address or location of the judgment debtor known to the
16 employer.

17 A lien obtained hereunder shall have priority over any
18 subsequent lien obtained hereunder, except that liens for the
19 support of a spouse or dependent children shall have priority
20 over all other liens obtained hereunder. Subsequent summonses
21 shall be effective in the order in which they are served.

22 (d) The Illinois Supreme Court may by rule allow an
23 employer to file answers to interrogatories by facsimile
24 transmission.

25 (e) Pursuant to answer under oath to the interrogatories by
26 the employer, an order shall be entered compelling the employer

1 to deduct from wages of the judgment debtor subject to
2 collection under a deduction order an amount which is the
3 lesser of (i) 15% of the gross amount of the wages or (ii) the
4 amount by which disposable earnings for a week exceed 45 times
5 the Federal Minimum Hourly Wage prescribed by Section 206(a)(1)
6 of Title 29 of the United States Code, as amended, in effect at
7 the time the amounts are payable, for each pay period in which
8 statutory exemptions under Section 12-804 and child support
9 garnishments, if any, leave funds to be remitted or, under a
10 wage deduction summons served on or after January 1, 2006, the
11 minimum hourly wage prescribed by Section 4 of the Minimum Wage
12 Law, whichever is greater. The order shall further provide that
13 deducted wages shall be remitted to the creditor or creditor's
14 attorney on a monthly basis.

15 (f) If after the entry of a deduction order, the employer
16 ceases to remit funds to the plaintiff pursuant to the order
17 without a lawful excuse (which would terminate the employer's
18 obligation under the deduction order such as the debtor having
19 filed a bankruptcy, the debtor having left employment or the
20 employer having received service of a support order against the
21 judgment debtor having priority over the wage deduction
22 proceedings), the court shall, upon plaintiff's motion, enter a
23 conditional judgment against the employer for the balance due
24 on the judgment. The plaintiff may then issue a Summons After
25 Conditional Judgment. After service of the Summons After
26 Conditional Judgment, the employer may show cause why the

1 conditional judgment, or some portion thereof should not be
2 made a final judgment. If the employer shall fail to respond or
3 show cause why the conditional judgment or some portion thereof
4 should not be made final, the court shall confirm the
5 conditional judgment and make it final as to the employer plus
6 additional court costs.

7 (g) Notwithstanding any other provision, the court may
8 enter an order reducing the amount of wages withheld, if the
9 court finds that the judgment debtor is a family supporter and
10 the full wage garnishment would result in a denial of
11 necessities to his or her dependent. The term "family
12 supporter" means an individual who actually supports and
13 resides with one or more dependents. The term "dependent" means
14 a child under the age of 18 who resides with and is supported
15 by the judgment debtor or a disabled person who resides with
16 and is supported by the judgment debtor and whose relationship
17 with the judgment debtor is that of parent, stepparent, son,
18 daughter, sibling, uncle, aunt, grandparent, or ward.

19 (Source: P.A. 94-306, eff. 1-1-06; 95-661, eff. 1-1-08.)

20 (735 ILCS 5/12-811) (from Ch. 110, par. 12-811)

21 Sec. 12-811. Trial and judgment.

22 (a) The judgment creditor or the judgment debtor may
23 contest the truth or sufficiency of the employer's answer and,
24 in accordance with local court rules, the court shall
25 immediately, unless for good cause the hearing is postponed,

1 proceed to try the issues. The answer of the employer may be
2 contested without further pleading.

3 (b) At any time on or before the return date, the judgment
4 debtor may request a hearing to dispute the wage deduction
5 because the wages are exempt or to reduce the amount of wages
6 withheld because the judgment debtor is a family supporter
7 under this Section by notifying the clerk of court before that
8 time, using forms as may be provided by the clerk of the court.
9 To obtain a hearing in counties with a population of 1,000,000
10 or more, the judgment debtor must notify the clerk of court in
11 person and in writing at the clerk's office before the return
12 date specified in the summons or appear in court on the date
13 and time specified in the summons. To obtain a hearing in
14 counties with a population of less than 1,000,000, the judgment
15 debtor must notify the clerk of the court in writing at the
16 clerk's office on or before the return date specified in the
17 summons. The Clerk of Court will provide a hearing date and the
18 necessary forms that must be prepared by the judgment debtor or
19 the attorney for the judgment debtor and sent to the judgment
20 creditor and the employer, or their attorney, regarding the
21 time and location of the hearing. This notice may be sent by
22 regular first class mail. At the hearing the court shall
23 immediately, unless for good cause the hearing is continued,
24 proceed to try the issues.

25 (b-5) Notwithstanding any other provision, the court may
26 enter an order reducing the amount of wages withheld and reduce

1 the rate of interest the judgment debtor is obligated to pay on
2 the judgment, if the court finds that the judgment debtor is a
3 family supporter and the full wage garnishment would result in
4 a denial of necessities to his or her dependent. For purposes
5 of this Act:

6 (1) "family supporter" means an individual who
7 actually supports and resides with one or more dependents;
8 and

9 (2) "dependent" means a child under the age of 18 who
10 resides with and is supported by the judgment debtor or a
11 disabled person who resides with and is supported by the
12 judgment debtor and whose relationship with the judgment
13 debtor is that of parent, stepparent, son, daughter,
14 sibling, uncle, aunt, grandparent, or ward.

15 (c) The trial shall be conducted as in other civil cases.

16 (d) If the finding is against an employer, a deduction
17 order shall be entered against the employer and in favor of the
18 judgment debtor to whom the employer is indebted, in the same
19 manner as if the facts are admitted.

20 (e) No deduction order shall be entered in favor of the
21 judgment creditor unless the affidavit filed by the judgment
22 creditor certifies that a copy of the wage deduction notice has
23 been mailed to the judgment debtor, under Section 12-805, and
24 the employer's answer provides a summary of the computation
25 used to determine the amount of non-exempt wages. If the
26 employer is a federal agency employer, a deduction order shall

1 be entered in favor of the judgment creditor if (i) the
2 affidavit filed by the judgment creditor certifies that a copy
3 of the wage deduction notice has been mailed to the judgment
4 debtor under Section 12-805 and (ii) the federal agency
5 employer identifies, on or with its periodic payments made
6 under subsection (b-5) of Section 12-808, the computation
7 method used to determine the amount of non-exempt wages. A
8 federal agency employer shall not be required to provide a
9 summary of the computation used to determine the amount of
10 non-exempt wages.

11 (Source: P.A. 89-28, eff. 6-23-95.)".